

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

**TARA ELIZABETH OLESEN-FRAYNE**

8 Onslow Road  
Burwood Park  
Walton on Thames  
Surrey  
KT12 5BB  
England  
United Kingdom

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**Case No. 1:13-cv-344**

**v.**

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**U.S. CITIZENSHIP AND  
IMMIGRATION SERVICES**

20 Massachusetts Ave., N.W., 4th Fl.  
Washington, D.C. 20529

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Serve:

U.S. Citizenship & Immigration Services  
U.S. Department of Homeland Security  
20 Massachusetts Ave., N.W., 4th Fl.  
Washington, D.C. 20529

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Eric H. Holder, Jr.  
Office of the Attorney General  
Department of Justice  
950 Pennsylvania Avenue, NW  
Washington, D.C. 20530

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United States Attorney for  
the District of Columbia  
Judiciary Center Building  
555 Fourth Street, N.W.  
Washington, D.C. 20530

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**COMPLAINT**

Plaintiff, Tara Elizabeth Olesen-Frayne (“Plaintiff” or “Ms. Olesen-Frayne”), by and through her undersigned counsel, hereby sues Defendant, U.S. Citizenship and Immigration Services (“USCIS”), and, in support, states as follows:

### **Nature of Action**

1. This Complaint is brought pursuant to 5 U.S.C. § 552 *et seq.* Plaintiff seeks judicial review, injunctive relief, and attorneys' fees, due to the USCIS's improper denial of Plaintiff's valid request for access to records under the Freedom of Information Act. Plaintiff has exhausted her administrative remedies. Accordingly, this Court has jurisdiction over the subject matter of this Complaint.

### **The Parties**

2. Plaintiff, Tara Elizabeth Olesen-Frayne, is a United States Citizen who currently resides at 8 Onslow Road, Burwood Park, Walton on Thames, Surrey, KT12 5BB, England, in the United Kingdom.

3. Defendant, USCIS, is a component of the United States Department of Homeland Security ("DHS"), and is an agency within the meaning of 5 U.S.C. § 552(f)(1). USCIS is headquartered in Washington D.C., and is responsible for deciding applications for permanent residence, and processing materials related to immigration and naturalization in the United States. USCIS has possession and control over certain documents, records, and information sought by Plaintiff.

4. Mr. Lars Olesen ("Mr. Olesen"), while not a party to this action, is a Danish citizen. As detailed below, Plaintiff requested access to certain of the USCIS's records regarding Mr. Olesen under the Freedom of Information Act ("FOIA"), but such request was denied.

### **Jurisdiction and Venue**

5. This Court has federal question jurisdiction over this action pursuant to 28 U.S.C. §1331, 5 U.S.C. § 702.

6. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(e), because USCIS is headquartered and located in this judicial district and a substantial portion of the acts and omissions giving rise to Plaintiff's cause of action occurred in this judicial district.

### **Factual Background**

#### **A. Marriage of Plaintiff and Mr. Olesen, Abduction of Children, Pending Divorce Case**

7. Plaintiff and Mr. Olesen were married in New York, New York on January 24, 2000. Plaintiff combined Mr. Olesen's last name with her maiden name, hyphenated as Olesen-Frayne.

8. Three children were born as a result of the marriage, namely: Anders Olesen-Frayne and twins, Erik and Alexandra Olesen.

9. Subsequently, Mr. Olesen abducted the children.

10. Ms. Olesen-Frayne filed a child abduction action in Florida. Pursuant to the court's ruling, the abducted children were returned to Ms. Olesen-Frayne, and now live with her in England. She also filed a divorce and custody proceeding against her husband, Lars Olesen, in the matter of *Olesen-Frayne v. Olesen*, before the Family Division of the High Court of Justice – Principal Registry, located in London, England, Case No.: FD09D00207 (the "Divorce Case").

11. Over the course of the various proceedings between the parties, it was determined that Mr. Olesen had attempted to become a permanent resident of the United States.

12. In the Divorce Case, Ms. Olesen-Frayne alleged that Mr. Olesen concocted a scheme to manipulate his immigration status, by submitting an application to USCIS to apply for permanent resident status on the basis of being a victim of domestic violence.

13. Accordingly, Ms. Oleson-Frayne sought documents from USCIS to determine exactly what Mr. Olesen communicated to USCIS regarding his application to become a permanent resident, and the abuse he contends occurred.

**B. FOIA Request, Denial, Appeal, and Improper Denial of Appeal**

14. On or about January 10, 2011, Ms. Olesen-Frayne, through undersigned counsel, submitted a FOIA request to the USCIS for all records relating to Mr. Olesen (the “FOIA Request”). A copy of the FOIA Request is attached as **Exhibit 1**.

15. On or about August 10, 2011, USCIS produced certain limited documents responsive to the FOIA Request, but redacted or withheld the majority of its file, namely seven pages in part and 162 pages in full (the “Withheld Documents”), on the stated basis that the information was protected from disclosure under FOIA. A copy of said denial is attached hereto as **Exhibit 2**.

16. USCIS did not provide Plaintiff with a log or index describing the withheld material, and/or explaining why the withheld material was exempt from disclosure under FOIA or the Privacy Act.

17. Accordingly, on October 6, 2011, Ms. Olesen-Frayne, through undersigned counsel, appealed the USCIS’s decision to the USCIS Appeals Office. A copy of said appeal is attached hereto as **Exhibit 3**.

18. On or about January 13, 2012, the USCIS denied the appeal, and instructed Ms. Olesen-Frayne that her only remaining course of action was judicial review or mediation. A copy of the appeal denial is attached hereto as **Exhibit 4**.

19. The Withheld Documents were withheld on the asserted basis of certain Exemptions, particularly sections 5, 6, 7(c) and 7(e) of FOIA, 5 U.S.C. §§ 522 (b)(5), (b)(6), (b)(7)(C), and (b)(7)(E).

20. Under well-settled law, FOIA is to be construed broadly to provide information to the public in accordance with its purposes and, for the same reason, the exemptions from production must be construed narrowly.

21. The asserted bases for denial of the FOIA Request are not proper grounds for denial of the request. In particular, the application materials and supporting documents cannot be withheld on the basis of:

- a. The inter-agency or intra-agency memorandum Exemption under Section (b)(5) because Mr. Olesen, and not the Service, was the source of the documents; or
- b. Either of the law enforcement Exemptions cited in the FOIA response from USCIS under Sections (b)(7)(C) or (b)(7)(E) because USCIS made no showing that it compiled the requested documents for any law enforcement purposes.

22. Additionally, the personal privacy exemption in Section (b)(6) was not a proper basis for denial of the FOIA Request. Disclosure of the information in Mr. Olesen's file – which contains Mr. Olesen's allegations of abuse with respect to Ms. Olesen-Frayne – for purposes of the Divorce Case, would not constitute a “clearly unwarranted invasion of privacy.”

23. Given the parties' marital relationship, the disclosure of identifying information about Mr. Olesen – such as his date of birth, social security number, home address or driver's

license number – cannot be an unwarranted invasion of privacy, and the decision to withhold documents because they contained such information was improper.

24. In addition, USCIS withheld certain information that is subject to the mandatory release provisions of FOIA. Under 5 U.S.C. § 522(b), USCIS is required to provide all reasonably “segregable portions” of a record after deletion of any exempt portions. The USCIS, however, improperly withheld all of the information contained in the requested documents, save for Mr. Olesen’s name and sexual orientation. By exempting whole documents merely because they potentially contained certain exempt materials, USCIS violated the requirement to segregate exempt data from non-exempt data and produce the non-exempt data.

25. In sum, the USCIS’s denial violated the requirement that agencies apply FOIA exemptions narrowly.

**Count I**  
**VIOLATION OF 5 U.S.C. §§ 522 *et seq.***

26. Plaintiff realleges and incorporates the allegations contained in the preceding paragraphs as if set forth fully herein.

27. Plaintiff submitted a proper FOIA request to the USCIS seeking documents related to Mr. Olesen.

28. The USCIS improperly denied the FOIA Request, and misinterpreted and misapplied exemptions under FOIA.

29. Plaintiff appealed the improper denial of the FOIA Request.

30. The USCIS improperly denied the appeal and affirmed the initial action.

31. Plaintiff is legally entitled to the records she has requested from the USCIS. There is no lawful basis for redacting or keeping back the Withheld Documents.

32. Plaintiff has exhausted her administrative remedies.

33. The USCIS has abused its discretion in the application of certain FOIA exemptions and the improper withholding of certain documents and information.

**Count II**  
**VIOLATION OF 5 U.S.C. §§ 701 *et seq.***

34. Plaintiff realleges and incorporate the allegations contained in the preceding paragraphs as if set forth fully herein.

35. The USCIS's withholding of agency records constitutes agency action unlawfully withheld in violation of the Administrative Procedure Act ("APA"), 5 U.S.C. §§ 701-706. This action is arbitrary, capricious, an abuse of discretion, and without observance of procedure required by law, in violation of the APA.

WHEREFORE, Plaintiff demands that this Court:

A. Find and declare that USCIS abused its discretion and otherwise improperly asserted exemptions and withheld records in violation of 5 U.S.C. §§ 522 *et seq.* and/or 5 U.S.C. §§ 701-706; and

B. Order the USCIS to promptly conduct a thorough search for and make available to Plaintiff all the records that she has requested; and

C. Enter a judgment awarding Plaintiff her reasonable costs and attorney's fees as permitted by 5 U.S.C. § 552(a)(4)(E) and 28 U.S.C. § 2412; and

D. Grant such other and further relief as justice and its cause may require.

Dated: March 15, 2013

Respectfully submitted,

/s/ Stephen J. Cullen  
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